

RESOLUTION NO. R-2018-79

**A RESOLUTION GRANTING AND ACCEPTING EASEMENTS AND AUTHORIZING
THE MAYOR TO SIGN AND DIRECTING THE CITY CLERK TO ATTEST TO THE
EASEMENT AGREEMENT, FOR REFUSE ENCLOSURE
BETWEEN THE CITY OF WHEATON, MAIN STREET PROPERTIES, LLC,
THE OWNER OF 109 NORTH MAIN STREET AND
THE OWNER OF 103 EAST FRONT STREET**

WHEREAS, there are various private and public properties and easements, in the City of Wheaton, ("City"), in rear yard areas behind commercial buildings having street addresses at 109 North Main Street, 103 East Front Street, and 111 Main Street ("Subject Properties"); and

WHEREAS, the rear yard areas of Subject Properties have different owners and different easement rights; and

WHEREAS, the rear yard areas of the Subject Properties and easements have traditionally been used for the parking of vehicles and the deposit and pick up of refuse; and

WHEREAS, the management of refuse and parking in the rear areas of the subject properties has been: haphazard, inefficient, caused conflicts amongst property owners, do not maximize sanitary refuse practices, and impedes best management practices; and

WHEREAS, the City, as owner of Lot 2 and owners of the Subject Properties have concluded that the easement agreement ("Easement Agreement") approved by this Resolution will help resolve the issues described above; and

WHEREAS, the parties to Easement Agreement further, agree that there are public benefits to be gained by the granting and acceptance of easements and the implementation of the Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, DuPage County, Illinois ("City"), pursuant to its home rule authority as follows:

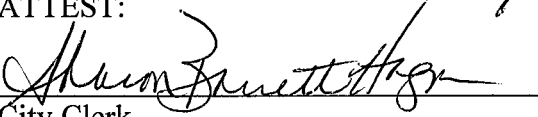
1. That the Mayor is hereby authorized to sign, and the City Clerk is hereby directed to attest, to that certain Easement Agreement between the City of Wheaton, Main Street Properties, LLC, 109 North Main Street owners and 103 East Front Street Owners attached hereto and incorporated herein as Exhibit 1; and
2. The City hereby grants the easement set forth in the Easement Agreement in accordance with the terms set forth therein; and
3. The City hereby accepts the easement from Main Street Properties, LLC set forth in the Easement Agreement in accordance with the terms set forth therein; and

4. All easements hereby dedicated, shall be administrated, maintained, inspected, and operated in strict conformance with the Easement Agreement; and
5. That staff is hereby authorized and directed to undertake any and all acts necessary to effectuate and administrator the foregoing grants of easement and Easement Agreement.

ADOPTED this 20th day of August 2018


Mayor

ATTEST:


City Clerk

Ayes:

Roll Call Vote:

Councilman Rutledge
Councilman Scalzo
Councilman Suess
Councilman Barbier
Councilman Prendiville
Mayor Gresk

Nays:

None

Absent:

Councilwoman Fitch

Motion Carried Unanimously

*This document was prepared
by, and after recording should
be mailed to:*

*Jim Knippen
Walsh, Knippen & Cetina, Chtd.
2150 Manchester Road, Suite 200
Wheaton, IL 60187*

FOR RECORDER'S USE

**EASEMENT AGREEMENT FOR REFUSE ENCLOSURE BETWEEN THE CITY
OF WHEATON, MAIN STREET PROPERTIES, LLC, 109 NORTH MAIN STREET
OWNER AND 103 EAST FRONT STREET OWNER**

This Easement Agreement ("Agreement") for design, construction, inspection, maintenance, repair and egress and ingress for the use of a refuse enclosure depicted on Exhibit 1 and labeled as " 'Enclosure Area' " is the combined easements from the City (Shaded Area) and Owner 1 (Cross-Hatched Area) total Enclosure Area is 18.0' x 16.0' (hereinafter "Enclosure") is made and entered into this 21st day of August 2018, between the City of Wheaton, an Illinois municipal corporation located in DuPage County, State of Illinois (hereinafter "City"), Main Street Properties, LLC, (hereinafter "Owner 1") 109 North Main Street, LLC, (hereinafter "Owner 2") and 103 East Front Street, LLC (hereinafter "Owner 3"). City, Owner 1, Owner 2 and Owner 3 may be referred to as a Party in this Agreement.

WITNESSETH

WHEREAS, Owner 1 is the owner of a portion of a parcel of real property (hereinafter ("Owner 1's" Parcel) depicted on Exhibit 1 as Lot 1 and Parcel 1 which is attached hereto and incorporated herein as if fully set forth and legally described as follows:

LOT 1 IN 111-113 SUBDIVISION, BEING A SUBDIVISION OF PART OF LOTS 2 AND 6 IN OWNER'S SECOND ASSESSMENT SUBDIVISION OF LOT 6 AND THE WEST HALF OF LOT 7 IN BLOCK 6 (EXCEPT THE NORTH 50 FEET

THEREOF) OF ORIGINAL TOWN OF WHEATON AND LAND ADJOINING SAME ON THE SOUTH TO NORTH RAILROAD STREET, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID 111-113 SUBDIVISION, RECORDED JANUARY 6, 2015 AS DOCUMENT R2015-001308, IN DU PAGE COUNTY, ILLINOIS.

PIN: 05-16-303-026; and

WHEREAS, the City is the owner of property contiguous to Owner 1's Parcel ("City Parcel") depicted on Exhibit 1 as Lot 2 and Parcel 2 and legally described as follows:

LOT 2 IN 111-113 SUBDIVISION, BEING A SUBDIVISION OF PART OF LOTS 2 AND 6 IN OWNER'S SECOND ASSESSMENT SUBDIVISION OF LOT 6 AND THE WEST HALF OF LOT 7 IN BLOCK 6 (EXCEPT THE NORTH 50 FEET THEREOF) OF ORIGINAL TOWN OF WHEATON AND LAND ADJOINING SAME ON THE SOUTH TO NORTH RAILROAD STREET, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID 111-113 SUBDIVISION, RECORDED JANUARY 6, 2015 AS DOCUMENT R2015-001308, IN DU PAGE COUNTY, ILLINOIS.

PIN: 05-16-303-027; and

WHEREAS, Owner 2 owns property at the address commonly known as 109 North Main Street, Wheaton, Illinois, which is in close proximity to the City and Owner 1's parcels and is legally described as follows:

LOT 3 OF OWNER'S SECOND ASSESSMENT SUBDIVISION OF LOT 6 AND THE WEST HALF OF LOT 7 IN BLOCK 6 (EXCEPT THE NORTH 50 FEET THEREOF) OF ORIGINAL TOWN OF WHEATON AND LAND ADJOINING SAME ON SOUTH TO NORTH RAILROAD STREET, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO SAID OWNER'S SECOND ASSESSMENT SUBDIVISION, RECORDED JULY 6, 1907 AS DOCUMENT 91155, IN DUPAGE COUNTY, ILLINOIS.

PIN: 05-16-303-009; and

WHEREAS, Owner 3 owns property at the address commonly known as 103 East Front Street, Wheaton, Illinois, which is close proximity to the City and Owner 1's parcels and is legally described as follows:

LOT 5 IN OWNER'S SECOND ASSESSMENT SUBDIVISION OF LOT 6 AND THE WEST ½ OF LOT 7, IN BLOCK 6 (EXCEPT THE NORTH 50 FEET) OF THE ORIGINAL TOWN OF WHEATON AND THE LAND ADJOINING SAME ON THE

SOUTH TO NORTH RAILROAD STREET, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID SECOND ASSESSMENT SUBDIVISION RECORDED JULY 6, 1907 AS DOCUMENT 91155 IN DUPAGE COUNTY, ILLINOIS.

PIN: 05-16-303-011; and

WHEREAS, a certain basement stairwell which is attached to part of the improvements to the building located on Owner 2's property encroaches on to the property that is owned by Owner 3, for a distance of 6.2 feet south of and 3.1 feet east (more or less) of the lot line of Owner 2's property (hereinafter "the Encroachment"); and

WHEREAS, Owner 2 has asserted rights to the subject encroachment under a theory of Adverse Possession or Prescriptive Easement, alleging that its predecessors in ownership of Owner 2's property have used "the Encroachment" openly, continuously, under claim of right and without permission for a period of years ("Adverse Possession Assertions"); and

WHEREAS, Owner 3 denies the above assertions by Owner 2 and has asserted the right to use "the Encroachment" by reason of being the record title holder of the area in question; and

WHEREAS, after meetings between the City, Owner 2 and Owner 3 in which the City indicated its willingness to construct the Enclosure contained in this Agreement, Owner 2 and Owner 3 settled their dispute and entered into an easement agreement recorded as document number 2012-158854; and

WHEREAS, Owner 1 and the City have elected to enter into an agreement with an easement granted by Owner 1 to the City and Owner 2 and Owner 3 to allow the design, construction, inspection, maintenance and repair of the Enclosure as depicted on Exhibit 1 and labeled as "cross-hatched area is Owner #1 Easement Area for Enclosure" and an easement granted by Owner 1 to the City and Owner 2 and Owner 3 for ingress and egress for access to the Enclosure in an open area as depicted on Exhibit 1 and labeled as "Easement for Ingress & Egress for Owner #2 and Owner #3"; and

WHEREAS, the City, pursuant to this Agreement, will also allow construction of the Enclosure on its parcel for use by Owners 1, 2 and 3; and

WHEREAS, the location of the Enclosure as described herein is necessary so as not to impede vehicular movement and parking in the various other properties located north, east and south of the Enclosure; and

WHEREAS, Owners 1, 2 and 3 desire to locate refuse containers in the Enclosure; and

WHEREAS, the Enclosure will benefit Owners 1, 2 and 3 by enclosing its refuse, grease and fat container in a more sanitary and aesthetic fashion than leaving the garbage dumpsters and grease dumpster in open areas without Enclosure; and

WHEREAS, the City has elected to provide Owners 1, 2 and 3 with an easement of egress and ingress across the City Parcel ("City Parcel") and in, through and out of the Enclosure for purposes of the deposit of commercial refuse, a copy of Exhibit 1 depicting the location of Owner 1, Owner 2 and Owner 3's City Easement Area being depicted in Exhibit 1 as "All of Lot 2 is a City Easement Area."

NOW THEREFORE, based on Ten Dollars (\$10.00) paid by the City to Owner 1, as well as the considerations recited above, and as to Owners 2 and 3, the considerations described below, the City, Owner 1 and Owners 2 and 3 agree as follows:

I

TERMS AND CONDITIONS BETWEEN THE CITY AND OWNER 1

1. RECITALS. The foregoing recitals are incorporated herein as representing the intent of the parties and as substantive representations and covenants.

2. CONSIDERATION. Owner 1 and the City acknowledge that the considerations set forth herein are adequate.

3. EASEMENT GRANTED. Owner 1 hereby grants an exclusive easement to the City and Owners 2 and 3 for the design, inspection, construction, maintenance, reconstruction, and replacement of the Enclosure and an easement for egress and ingress to and from the Enclosure and for occupancy and use of the Enclosure to be managed by the City over and upon that portion of the Owner 1's Parcel illustrated on Exhibit 1 and labeled as "cross hatched area is Owner #1 Easement Area for enclosure" and "Easement for Ingress & Egress for Owner #2 and Owner #3" ("Owner 1 Easement Area"). The easement shall run with the land and inure to the benefit of City, Owner 1 and Owner 2 and their successors and assigns. Such easement for occupancy and use shall be strictly subject to the terms and conditions of this Agreement.

4. NO FEES. Owner 1 shall pay no fees to the City to occupy the Enclosure to be constructed on the Easement Areas (as defined in Paragraph 14).

5. MANAGEMENT OF ENCLOSURE. The City shall be solely responsible for the management and maintenance of the Enclosure and the Easement Areas in a manner consistent with the City Code and this Agreement.

6. REFUSE CONTAINER PLACEMENT. Owner 1 shall have first right of the placement of its refuse and grease container in the Enclosure which is depicted in Exhibit 2, but in no event shall the placement of the refuse and grease container for use by Owner 1 hinder, obstruct or prevent the use or occupancy by Owners 2 and 3 of the Enclosure for the purpose thereof as described hereinafter. Once Owner 1 has selected its location in the Enclosure, such location shall be exclusive to Owner 1. No Party shall park any vehicle in or near the Easement Areas that hinders, obstructs or prevents access to or from the Enclosure.


7. NO FINANCIAL OBLIGATIONS. Owner 1 shall have no other financial obligations to Owners 2 and 3 in order that Owners 2 and 3 may occupy and use the Enclosure so long as this Agreement remains in effect, unless Owner 1 is negligent or willfully and wantonly damages the Enclosure or breaches any of the terms and conditions of this Agreement.

8. NO UNREASONABLE INTERFERENCE. Neither Owner 1 nor the City shall engage in any conduct which unreasonably interferes with the use of the Easement Areas (as defined in Paragraph 14) by Owner 2 or by Owner 3.

9. OWNER 1 CONDITIONS. Owner 1 shall comply with the conditions set forth in Paragraph 16 of this Agreement for use of the Enclosure.

10. REFUSE CONTRACTOR. Owner 1 at its sole cost and expense shall contract with a City's licensed refuse hauler, and/or fat and grease hauler, to remove the refuse or grease and fats, as the case may be, from its refuse and fat or grease container on sufficient basis to enable the Enclosure and its surrounding environment to remain clean and sanitary at all times.

11. TERMINATION. Owner 1 may use the Enclosure on the City Easement Area (as defined in Paragraph 14), so long as the Owner 1 is not in material breach of this Agreement or until the reasons for the establishment and use of the Enclosure no longer exist.

 12. REPAIR. The City Manager shall exercise reasonable discretion in making the determination of when and how the Enclosure and its appurtenances shall be repaired, restored or replaced. The repair, restoration or replacement of the Enclosure on the Owner 1 Easement Area shall be as provided in Section 26 of this Agreement.

II

TERMS AND CONDITIONS PERTAINING TO THE CITY, OWNER 1, OWNER 2 AND OWNER 3

13. RECITALS. The foregoing recitals are incorporated herein as representing the intent of the parties and as substantive representations and covenants.


14. EASEMENT GRANTED. The City hereby grants Owners 1, 2 and 3 an exclusive easement of egress and ingress over and upon the City Parcel and grants an easement for the occupancy and use of the Enclosure to Owner 1, Owner 2 and Owner 3, strictly subject to the terms and conditions of this Agreement (collectively "City Easement Area") being depicted on Exhibit 1 as "Lot 2 is a City Easement Area for Ingress and Egress of Enclosure Area on Lot 2 for Owner 1, Owner 2 and Owner 3". The Owner 1 Easement Area and City Easement Area collectively shall be referred to as "Easement Areas". Owner 2 and Owner 3 are further granted an easement by the City and Owner 1 to install a security camera (without sound) at, upon, or within the City Easement Area of the Enclosure. Owner 2 or Owner 3, as the case may be, who installs a security camera shall provide a copy of pictures or videos taken by the security camera upon the City's request and without a search warrant. Subject to the approval of a majority of Owner 1, Owner 2 and Owner 3, any owner may install a lock on the entry to the Enclosure so long as all other owners, the City and their refuse haulers are able to access the Enclosure for all purposes authorized by this Agreement. An Owner shall notify all other parties to this Agreement 72 hours prior to the installation of a lock and shall provide a code, key, or combination to the lock as the case may be within twenty-four hours of installation of the lock.

15. EASEMENT FEE. Commencing upon the completion of the Enclosure by the City, Owner 2 and Owner 3, shall each pay the City a fee in the sum of fifty dollars (\$50.00) per year as follows; the first installment of Five Hundred Dollars (\$500.00) shall be paid by Owners 2 and 3 for the first ten (10) years of the Easement prior to the time either occupies the Enclosure. The City will use the fee(s) to defray the costs of original construction of the Enclosure and/or to pay its costs of administration. After the first ten (10) years, the fees may be adjusted by the City each year to accommodate inflation and/or market cost increases for the time and material reasonably necessary to maintain, repair, restore, or replace the foregoing (hereinafter "Work"). Damage caused to the foregoing as a result of Owner 1, Owner 2 and Owner 3's, or its tenant(s)', negligent or willful and wanton acts or omissions shall be the responsibility, as the case may be, of Owner 1, 2 or 3. If Owner 2 or Owner 3 permanently abandons use of the Enclosure voluntarily, or as a result of termination of its easement by the City for cause, no previously paid easement fees, or any portion thereof, shall be refunded by the City to Owner 2 or to Owner 3.

16. CONDITIONS. Owner 1, Owner 2 and Owner 3, pursuant to the material conditions of this Agreement, shall install, maintain and use the Enclosure as follows:


- a. The acts or omissions of any of the respective tenants of Owners 1, 2 or 3 shall be deemed the acts or omissions of the Owners 1, 2 or and 3 whether or not Owners 1, 2 and 3 had knowledge of its tenant's acts of omissions. If a tenant's acts or omissions are breaches of this Agreement and can be remediated, the City will give the offending Owner 1, 2 and 3 notice and a reasonable time to remedy the breach. In no event will the reasonable time exceed fourteen (14) calendar days without the written permission of the City manager or his designee.
- b. No Owner shall be liable for the acts, omissions or breaches of this Agreement by another Owner or the tenant of another Owner. If there are occurrences in or around the Enclosure causing damage or creating nuisance conditions, each Owner shall cooperate with the City in identifying the wrongdoer or cause.
- c. The size of any single refuse container shall not exceed dimensions of seven feet by three feet eight inches (7' x 3'8"). Once a refuse container's size and location is specified on Exhibit 2, no Owner shall increase the size or change the location of its refuse container without the written permission of the City Manager.
- d. All refuse containers shall have wheels, or be small enough, to enable any refuse haulers to easily move and off-load the refuse container to a refuse truck parked outside the Enclosure.
- e. All Owners shall require their refuse hauler to put the refuse container back in the Enclosure in the space designated for that refuse container on Exhibit 2.
- f. All Owners shall maintain the area at, around, and within the Enclosure in a clean and sanitary condition. No food, waste, debris, rubbish, or other disposed items shall be permitted outside of any of the Owner's refuse containers; and
- g. No hazardous waste, as that term is defined by state law and federal law, shall be placed by the any Owners in any refuse container or the Enclosure;

- h. Refuse containers shall have tight-fitting and secure lids to minimize the escape of refuse and odors and the entry of vermin and other animals;
- i. The lids of the refuse containers and grease and oil containers shall remain closed except during the deposit or removal of refuse;
- j. Neither any Owner nor any tenants, if applicable, shall do anything to compromise or damage the floor, walls, or surfaces of the Enclosure or the egress and ingress areas of the Easement Areas or to make the refuse container visible outside the Enclosure except when refuse is being deposited or removed;
- k. The City and Owner 1, without charge, shall allow other Owners egress and ingress across the Easement Areas to use the Enclosure;
- l. No Owner shall share its refuse container unless it has a written sharing agreement with another Owner;
- m. Cooking fats and grease shall not be deposited in a refuse container but may only be deposited in a segregated container specifically designed for the disposal of used cooking fats and grease ("Grease Container"). Except as provided below, only Owner 1 shall have a Grease Container in the Enclosure. Exhibit 1 shall identify the specific location the Grease Container easement. The Owner using the Grease Container, and no other Owner, shall be responsible for the Grease Container or any maintenance or repair of the Enclosure related to the use of the Grease Container. No other Owner shall place a grease container in the Enclosure unless it removes a permitted existing refuse container and then only with the written permission of the City Manager, which permission shall not be unreasonably withheld.
- n. All Owners shall cooperate with the City so as not to interfere or impede with City Work on the Easement Areas or Enclosure.
- o. No Owner shall interfere or impede a refuse hauler's egress/ingress to or from the Easement Areas or Enclosure including, but not limited to, parking of any vehicles in the Easement Areas that would interfere or impede egress/ingress to or from the Easement Areas or Enclosure.
- p. If the City requires recycling by general ordinance the Owners shall not place recyclables in a refuse container in the Enclosure.
- q. The City shall have the right to access the Enclosure at any time.

17. **OWNER 1 TENANT.** If Owner 1 leases 109 North Main Street Owner's tenant shall also be obligated to comply with all obligations placed upon Owner 1 pursuant to this Agreement. This requirement shall be included in any lease between Owner 1 and its tenant. 

18. Owner 1 shall comply with the provisions of section 16 ("Conditions") of this Agreement, including all subsections of said Section 16.

19. **DISPUTES.** Any disputes between or among Owner 1 or Owner 2 or Owner 3 regarding the use of the Easement Areas shall initially be mediated by the City Manager within 30 days of the dispute. If the City Manager is unsuccessful resolving the dispute within this 30-day period, any Owner shall be able to pursue its rights and remedies pursuant to the remedies permitted by this Agreement. The City shall be made a party to such litigation but the Owner bringing the litigation shall reimburse the City for its attorneys' fees, costs and expenses regardless of the outcome of the litigation.

20. **CITY AS DEFENDANT**  Other than bringing the City into litigation as a party pursuant to Section 19 of this Agreement, or to contest the City's termination of any of Owner's easement for cause, or the City's unilateral altering of the material terms of this Agreement, no Owner shall make the City a party to litigation or sue the City, its elected and appointed officials, employees, agents, successors and for any reason, or in any matter whatsoever, related to this Agreement. In no circumstance whatsoever, regardless of the nature of the cause of action or claim, shall the City be responsible to any Owner for any actual damages, consequential attorney's fees, costs or expenses. No settlement of a dispute involving any Owner using the Enclosure shall become final without the approval of the City Manager and said approval shall not be unreasonably withheld, delayed or denied.

21. **WAIVER AND RELEASE.** All Owners hereby fully waive and release any and all actions, causes of action, claims, rights, injuries including death, property damage, economic damages whether direct or consequential, costs, and expenses against the City, its elected and appointed officials, employees, agents or assigns arising in any manner or proximately caused by the City's acts or omissions or breaches of this Agreement. This section shall not be interpreted to waive or release the ability of any Owner to seek only a declaratory judgment and injunctive relief that i) an involuntary termination of this Agreement by the City was without just cause; or, ii) the City unilaterally altered a material term of this Agreement.

22. **REFUSE CONTRACTOR.** Where applicable, the tenant or Owner that shall be authorized by this Agreement (as amended from time to time) to use a fat or grease hauler or other similar disposal system for fat or grease, at its sole cost and expense, shall contract with a City-licensed refuse hauler, and/or fat and grease

hauler for any particular Owner or tenant of an Owner using the Grease Container, to remove the refuse, or grease and fats as the case may be, from its refuse or fat and grease container on a sufficient basis so that the Enclosure and surrounding environs remain clean and sanitary at all times.

23. **TERMINATION.** Any Owner shall retain all rights under this Agreement so long as the said Owner is not in material breach of this Agreement, or until the reason for the establishment and use of the Enclosure no longer exists, or until such Owner has permanently abandoned the Easement Areas. An Owner shall only be considered to have permanently abandoned this Easement Areas by terminating its interest in the Easement Areas in writing or where such Owner itself or its tenant or tenants have not used the Enclosure for a continuous period of thirty-six (36) months. The presence of a refuse container in the Enclosure designated for use by an Owner or its tenant shall be prima facie evidence of use. The City shall not be able to terminate this Agreement against any Owner that is not in material breach of this Agreement or has not permanently abandoned the Easement Areas.

24. **BREACH.** A material breach of this Agreement shall mean a violation of any one or more of the following:

- a. Failure to observe or perform any of the covenants, conditions or obligations of the Agreement; or
- b. Failure to pay the City the easement fees; or
- c. Any other act or omission which materially undermines or compromises the intent or terms of this Agreement.

25. **CURE/REMEDIES.** No Party to this Agreement shall be deemed to be in default of this Agreement prior to the expiration of thirty (30) days (72 hours or less if the breach presents an imminent threat of physical harm to persons, in which case the material breach shall be cured within 72 hours or less) from receipt of written notice from any other Party specifying the particulars in which each defaulting Party has failed to perform the obligations of this Agreement unless such defaulting Party, prior to the expiration of such thirty (30) days has rectified the particulars specified in such notice of default. However, such defaulting Party shall not be deemed to be in default if such failure cannot be rectified within such thirty (30) day period and the defaulting Party is using good faith and its best efforts to rectify the particulars specified in the notice of default. After a default, any Party may institute legal action against the defaulting party for declaratory or injunctive relief, monetary damages or any other remedy provided by law. After a default by the City of this Agreement, no Owner may seek any relief or remedy other than declaratory and injunctive relief against the City as provided in sections 19 and 20 of this Agreement. Except as expressly provided herein with reference to actions permitted against the City, no

remedy herein conferred upon or reserved to any Party shall preclude any other remedy herein or by law provided, but each shall be cumulative. The above 30-day notice period shall not be applicable to any dispute after the City Manager has not been able to mediate pursuant to Section 19 of this Agreement. After the 30-day period in Section 19 has expired, any Owner shall have the right to pursue any of its rights and remedies provided in this Section against any other Owner.

Except as expressly provided herein with respect to legal action involving the City, in any legal action or proceeding with respect to this Agreement, the prevailing Party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the non-prevailing Party or Parties in any such action or proceeding its reasonable costs, expert fees and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal) as determined by a Court of competent jurisdiction.

26. CITY MANAGER DETERMINATION. The City Manager in his sole discretion shall make the determination of when and how the Enclosure and its appurtenances shall be maintained repaired, restored, or replaced. Although the City shall bear the initial cost of the construction of the Enclosure and appurtenances, all Owners (subject to the limitations expressed with respect to Owner 1 in section 7 above) shall reimburse the City for their reasonable proportional share of costs not covered by the easement fees to defray the costs of maintenance, restoration or replacement. Payment shall be made within thirty (30) days of invoice.

27. USE OF PROPERTY AFTER TERMINATION. In the case of termination for cause against any Owner of this Agreement ("Terminated Owner"), the Terminated Owner shall not place any refuse container on the Easement Areas without written permission of the City Manager or Owner 1, as the case may be. Failure of the Terminated Owner to remove its refuse containers within the ninety (90) days after termination for cause shall give the City the legal authority to remove the refuse container without liability to the Terminated Owner. If the refuse container is owned by a third party, the Terminated Owner shall defend and indemnify the City against any and all claims or damages of a third party for the removal.

28. INDEMNIFICATION. Each Owner agrees to indemnify, defend, protect, and hold harmless every other Owner and its tenants, and such Owner's respective officers, directors, members, managers, employees, agents, guests and invitees, the City, its corporate authorities, appointed officials, officers, and employees from and against any and all claims, demands, losses, damages, injuries, deaths, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, subrogation claims, remedial actions of any kind, all costs and clean-up actions of any kind, and all costs and expenses occurred in connection therewith,

including but not limited to reasonable attorneys' fees, expert witness fees, and costs of defense, directly or proximately resulting from the indemnifying Owner's or its tenant's acts or omissions related to this Agreement ("Owner Indemnification"); provided, however, if a particular Owner provides an indemnification by the Owner's tenant to the City and other Owners substantially similar to the Owner's Indemnification, the City and other Owners shall only seek indemnification provided in this section from the indemnifying Owner's tenant, not that particular Owner, unless Owner's tenant has inadequate insurance to hold the City or the other Owners fully harmless, or unless the subject matter of the claim in question is not covered by insurance. In the latter case the City or other Owners may seek indemnification first from the Owner's tenant and then from the indemnifying Owner. Nothing in this Agreement shall be deemed a waiver, by the City of any defense or immunity relating to the indemnifying Owner or its property, or any other person or entity or their property, that are or would be otherwise available to the City, its corporate authorities, officers, agents, and employees under the provisions of the Illinois Local Government Employees Tort Immunity Act, or that are otherwise available to local governments and their corporate authorities, officers, agents, and employees under the common law of the State of Illinois or the United States of America, all such rights being reserved to the greatest extent allowed by law.

29. **INSURANCE.** Each Owner, or Owner's tenant, shall file with the office of the City Manager a policy or certificate insurance maintaining a minimum of one million dollars (\$1,000,000.000 of commercial liability insurance coverage, issued by a solvent insurance company authorized to do business in the state of Illinois, covering each Owner's portion of the Easement Areas and its use insuring each Owner against liability for any injury (including death) to any person or damages to any property, resulting because of each Owner's use of the Easement Areas. The insurance carrier and policy shall be subject to the reasonable approval of the City Manager. The City shall be named as an additional insured under the policy.

30. **ADDITIONAL INSURANCE REQUIREMENTS.** In addition, the certificate of insurance shall provide:

- a. The policy number; name of Insurance Company; name and address of the agent or authorized representative; name and address, and telephone number of the insured; policy expiration date; and specific coverage amounts; and
- b. That City shall receive thirty (30) days written notice prior to the cancellation or alterations reducing the policy limits; and
- c. That each Owner's insurance is primary to any other valid or collectable insurance that the City may possess, including any self-insured retention that each Owner may have; and

- d. That any insurance that the City possesses shall be considered excess only, and shall not be required to contribute with each Grantee's insurance.

31. **WORKERS' COMPENSATION SUBROGATION WAIVER.** By use of the Easement Areas, each Owner, or its tenant, shall secure a waiver of any subrogation claims which could be asserted by its Workers' Compensation carrier against the City. Any Owner who has tenants using the Enclosure shall have its tenant execute a subrogation waiver or hold-harmless agreement for the benefit of the City agreeing to the same. If any Owner or its tenant's Workers' Compensation insurance carrier refuses to waive subrogation claims against the City, as required herein, that Owner hereby agrees to defend, indemnify, and hold harmless the City for all subrogated amounts of the Owner, or its tenant, for Workers' Compensation subrogation claims against the City bought by the Owner's or tenant's Workers' Compensation carrier, including the City's out of pocket costs and reasonable attorney's and expert witness fees. Each Owner shall obtain and provide the subrogation waivers from its tenants to the City before occupying the Enclosure or upon entering into a new lease regarding the Enclosure.

32. **SUCCESSORS.** This Agreement shall inure to the benefit of the Parties, heirs, successors, tenants and assigns.

33. **PARTIAL INVALIDITY.** No Owner shall have the right to challenge the validity of this Agreement except as provided in this Agreement or any part hereof for any reason, and such challenge shall render this entire Agreement, null, void, and invalid only as to the Owner challenging the validity of this Agreement but not for any remaining Owner or Owners. In such event, the City shall have no obligation to provide any easement relating to the Enclosure or any of the benefits therefrom to the Owner challenging the validity of this Agreement.

34. **RECORDING.** This Agreement shall be recorded at the expense of the Owner who elects to record this Agreement.

35. **DAY-TO-DAY MANAGEMENT.** The City Manager or his designee shall have the authority to manage and administer this Agreement, including the placement and size of refuse containers, without amendment of this Agreement, except he shall not change the location or size of the containers for the any Owner without such owner's consent nor shall such management be inconsistent with the fundamental terms of this Agreement.

36. **ENTIRE AGREEMENT.** Provisions of this Agreement and its exhibits represent the entire Agreement between the Parties and supersede all prior agreements, contracts, understandings, promises, and representations, oral or

written, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may only be modified by a further written agreement between the Parties and no modification shall be effective unless properly approved and signed by each party.

37. NOTICES: Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, by national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change or add to, from time to time, their respective address(es) for notice hereunder by like notice to the other party. The notice addresses of the parties hereto are as follows:

If to 103 E. Front Street, LLC:

S. Louis Rathje
300 E. Roosevelt Rd.
Suite 200
Wheaton, IL 60187
Facsimile: (630) 221-0068

With a copy to:

Tracy D. Kasson
Rathje & Woodward, LLC
300 E. Roosevelt Road
Suite 300
Wheaton, Illinois 60187
Facsimile: (630) 668-9218

If to 109 N. Main, LLC:

c/o Karen Millonzi
109 N. Main St.
Wheaton, IL 60187

With a copy to:

Joseph R. Fortunato
Attorney
Kaufman, Dolowich and Voluck, LLP
135 S. La Salle St. Suite 2100
Chicago, IL 60603
Facsimile: (312)759-0402

If to City of Wheaton:

City of Wheaton
303 West Wesley Street
Wheaton, IL 60187
ATTN: City Manager

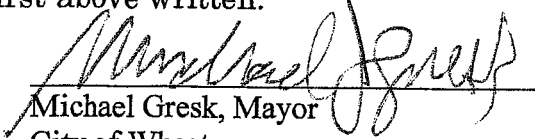
If to Main Street Properties, LLC
Luong Loi Restaurant
Attn: Jason Nguyen
111 Main Street, Wheaton, IL 60189

With a copy to:
John Gutzke
Rolewick & Gutzke
1776 S. Naperville Road, Suite 104A
Wheaton, IL 60189
Facsimile: 630-653-1579

38. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered to be an original document. For purposes of this Agreement and the rights of the Parties to enforce it, a facsimile transmission, email .pdf or other electronic delivery of a signature shall have the same force and effect as an original signature.

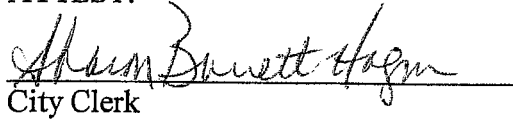
[signature page to follow]

IN WITNESS WHEREOF the Corporate Authorities of the City of Wheaton, given to the Mayor of the City of Wheaton, and the owner have here unto set their hands and seals and have caused this instrument to be executed by their duly authorized officials with the corporate seal attached hereto, all on the date and year first above written.


Michael Gresk, Mayor
City of Wheaton

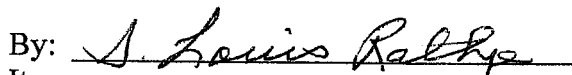
8/1/18
Date

ATTEST:


City Clerk

Date

103 E. Front Street, LLC

By: 
Its: MANAGER

8-20-2018
Date

109 N. Main, LLC

By: _____
Its: _____

Date

Main Street Properties, LLC

By: _____
Its: _____

Date

IN WITNESS WHEREOF the Corporate Authorities of the City of Wheaton, given to the Mayor of the City of Wheaton, and the owner have here unto set their hands and seals and have caused this instrument to be executed by their duly authorized officials with the corporate seal attached hereto, all on the date and year first above written.

Michael Gresk, Mayor
City of Wheaton

Date

ATTEST:

City Clerk

Date

103 E. Front Street, LLC

By: _____
Its: _____

Date

109 N. Main, LLC

By: Karen Mullonze
Its: _____

4-24-18
Date

Main Street Properties, LLC

By: _____
Its: _____

Date

IN WITNESS WHEREOF the Corporate Authorities of the City of Wheaton, given to the Mayor of the City of Wheaton, and the owner have here unto set their hands and seals and have caused this instrument to be executed by their duly authorized officials with the corporate seal attached hereto, all on the date and year first above written.

Michael Gresk, Mayor
City of Wheaton

Date

ATTEST:

City Clerk

Date

103 E. Front Street, LLC

By: _____
Its: _____


Date

109 N. Main, LLC

By: _____
Its: _____

Date

Main Street Properties, LLC

By: 
Its: Jason Nguyen, Manager

8/2/2018
Date

MORTGAGEE CONSENT

State of Illinois)

County of DUPAGE) SS

The undersigned, as Mortgagee, under the provisions of certain mortgage dated April 7, 2015 and recorded in the Recorder's Office of DuPage County, Illinois, on April 9, 2015 as document number R2015-036529 hereby consents to the Easement Agreement For Refuse Enclosure Between the City of Wheaton, Main Street Properties, LLC, 109 North Main Street Owner and 103 East Front Street Owner granted by Main Street Properties, LLC on its Property.

Dated 06-06-, 2018

JP Morgan Chase Bank, NA, Mortgagee

By: Melissa Pillars

Printed Name: MELISSA PILLARS

Its: Vice-President

EXHIBIT 1

EXHIBIT "1"

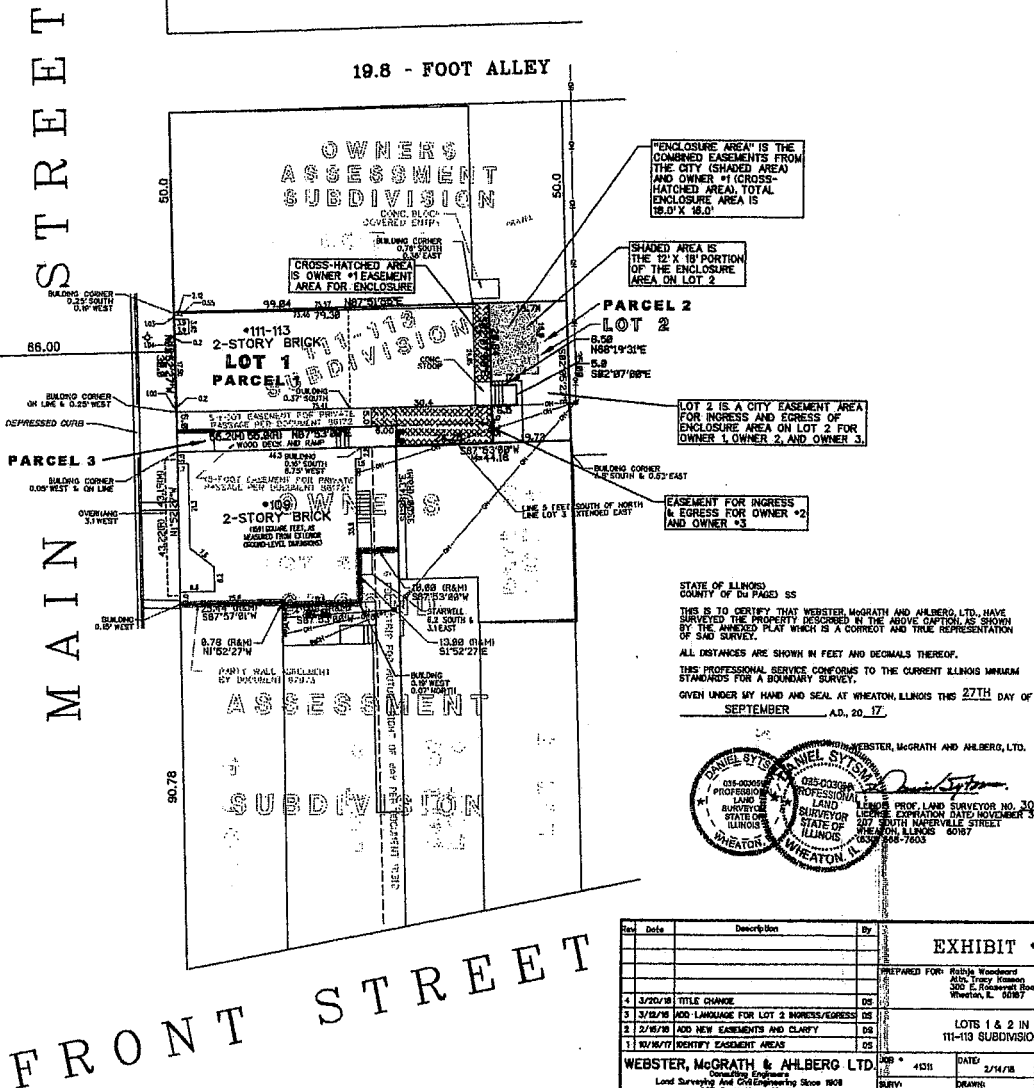
FOR EASEMENT AGREEMENT



PARCEL 1:
LOT 1 IN 11-13 SUBDIVISION BEING A SUBDIVISION OF PART OF LOTS 2 AND 5 IN OWNER'S
SECOND ASSESSMENT SUBDIVISION OF LOT 8 AND THE WEST HALF OF LOT 7 IN BLOCK 8
(EXCEPT THE NORTH 50 FEET THEREOF) OF ORIGINAL TOWN OF WHEATON AND LAND ADJOINING
SAME ON THE SOUTH TO NORTH RAILROAD STREET IN SECTION 36, TOWNSHIP 38 NORTH, RANGE
30 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAN OF SAID 11-13 SUBDIVISION,
RECORDED JANUARY 6, 2015 AS DOCUMENT #2015-05300, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 2:
LOT 2 IN 11-13 SUBDIVISION BEING A SUBDIVISION OF PART OF LOTS 2 AND 6 IN OWNER'S
SECOND ASSESSMENT SUBDIVISION OF LOT 8 AND THE WEST HALF OF LOT 7 IN BLOCK 8
(EXCEPT THE NORTH 50 FEET THEREOF) OF ORIGINAL TOWN OF WHEATON AND LAND ADJOINING
SAME ON THE SOUTH TO NORTH RAILROAD STREET IN SECTION 36, TOWNSHIP 38 NORTH, RANGE
30 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAN OF SAID 11-13 SUBDIVISION,
RECORDED JANUARY 6, 2015 AS DOCUMENT #2015-05300, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 3: EASEMENT FOR THE BENEFIT OF PARCEL 1, AS CREATED BY AGREEMENT BETWEEN
NORA D. OTT AND CHARLES P. OTT, FOR HUSBAND AND JAMES S. FORDNET AND PATTY S.
FORDNET, HIS WIFE DATED AUGUST 22, 1983 AND RECORDED NOVEMBER 22, 1983 AS
DOCUMENT #8712, FOR A PRIVATE PASSAGEWAY OVER THE NORTH 5 FEET OF LOT 3 IN
OWNER'S SECOND ASSESSMENT SUBDIVISION OF LOT 8 AND THE WEST HALF OF LOT 7 IN BLOCK
8 (EXCEPT THE NORTH 50 FEET THEREOF) OF THE ORIGINAL TOWN OF WHEATON AND LAND
ADJOINING SAME ON THE SOUTH TO NORTH RAILROAD STREET IN SECTION 36, TOWNSHIP 38
NORTH, RANGE 30 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DU PAGE COUNTY, ILLINOIS.



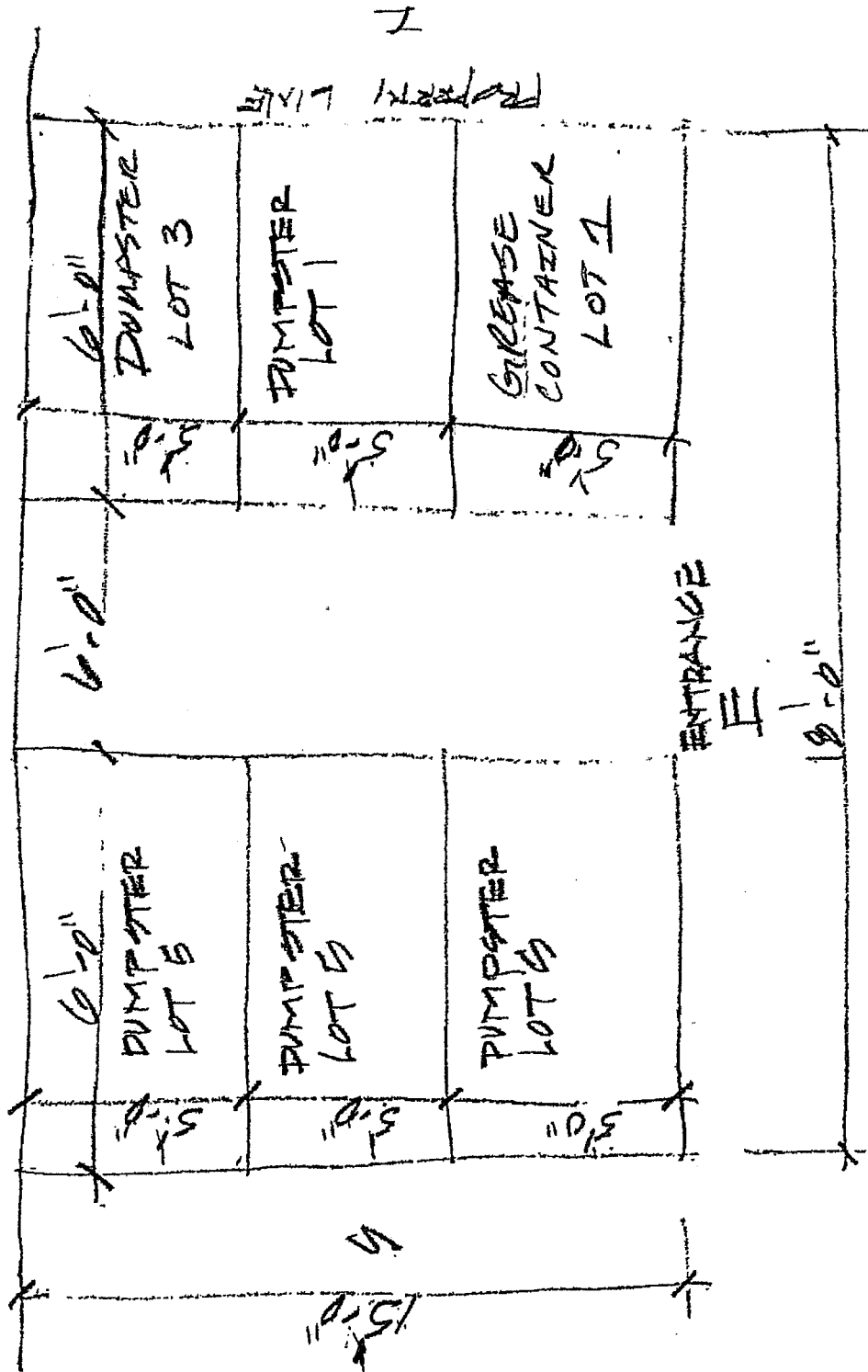
STATE OF ILLINOIS
COUNTY OF DU PAGE SS
THIS IS TO CERTIFY THAT WEBSTER, McGRATH AND AHLBERG, LTD., HAVE
SURVEYED THE PROPERTY DESCRIBED IN THE ABOVE CAPTION, AS SHOWN
BY THE ANNEKED PLAT WHICH IS A CORRECT AND TRUE REPRESENTATION
OF SAID SURVEY.
ALL DISTANCES ARE SHOWN IN FEET AND DECIMALS THEREOF.
THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM
STANDARDS FOR A BOUNDARY SURVEY.
GIVEN UNDER MY HAND AND SEAL AT WHEATON, ILLINOIS THIS 27TH DAY OF
SEPTEMBER A.D. 2017.



No.	Date	Description	By
1	2/14/18	TITLE CHANGE	DS
2	2/14/18	ADD LANGUAGE FOR LOT 2 OWNERS/EGRESS	DS
3	2/14/18	ADD NEW EASEMENTS AND CLARIFY	DS
4	10/16/17	IDENTIFY EASEMENT AREAS	DS

WEBSTER, McGRATH & AHLBERG LTD.		DATE: 2/14/18		SCALE: 1" = 20'	
Professional Engineer Land Surveying and Civil Engineering Since 1908 227 South Main Street Wheaton, Illinois 60157 Design Firm License No. RA-003101 (630) 808-7803 FAX (630) 882-7700 EMAIL: WHEELTOWN@GMAIL.COM		DRAWN: DS		DESIGN: DS	
		SHEET: *		SHEET: *	

EXHIBIT 2

[illegible]

